Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM 1995

NO.

CAROLEE A. MEDICO,

Petitioner,

V.

NANCY M. SOBOLEVITCH,
Court Administrator of Pennsylvania; *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the
Supreme Court of Pennsylvania
Philadelphia District

PETITION FOR A WRIT OF CERTIORARI

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33 pp

QUESTION PRESENTED

1. Did the Pennsylvania Supreme Court abuse its discretion and err in denying the Petitioner's application for a Writ of Mandamus, which sought to compel the Respondent court officers to permit the Petitioner access to the Pennsylvania Court of Common Pleas, to file moving papers and to obtain Rules Returnable and Dates Certain for Argument of her requests for relief, as required by the Pennsylvania Rules of Civil Procedure; where copies of the Petitioner's application for Mandamus relief were served upon the Respondents; and where the Respondents did not file answers to the Petitioner's verified allegations, thereby admitting allegations of the Respondents' impermissible conduct in refusing the Petitioner access to the court.

PARTIES TO THE PROCEEDING

Carolee A. Medico, Petitioner
Bank Towers—Suite 310
321 Spruce Street
Scranton, Pennsylvania 18503

Nancy M. Sobolevitch, Respondent
Pennsylvania State Court Administrator
1515 Market Street--Suite 1414
Philadelphia, Pennsylvania 19102

Patrick J. Toole, Jr., Respondent
Luzerne County President Judge
Luzerne County Courthouse
200 N. River Street
Wilkes Barre, Pennsylvania 18711

Wilbert E. Thomas, Respondent
Luzerne County Court Administrator
Luzerne County Courthouse
200 N. River Street
Wilkes Barre, Pennsylvania 18711

Jay W. Myers, Respondent
Senior Judge's Chambers
Luzerne County Courthouse
200 N. River Street
Wilkes Barre, Pennsylvania 18711

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PETITION FOR A WRIT OF CERTIORARI

The Petitioner, Carolee A. Medico, respectfully prays that a writ of certiorari issue to review the Order of the Supreme Court of Pennsylvania, issued per curiam on on July 23, 1996, to Term and Docket Number 89 M.D. Miscellaneous Docket 1996.

OPINIONS BELOW

No opinions issued from the Supreme Court of Pennsylvania. On July 23, 1996, the Pennsylvania Supreme Court, per curiam, denied Petitioner's application for a Writ of Mandamus; at Term and Docket 89 M.D. Miscellaneous Docket 1996.

JURISDICTION

The judgment of the Supreme Court of Pennsylvania was entered by an order issued on July 23, 1996.

The jurisdiction of the Supreme Court is invoked pursuant to 28 U.S.C. § 1257 (a) (relating to certiorari and final judgments or decrees rendered by the highest court of a state in which a decision could be had).

On July 23, 1996, the Pennsylvania Supreme Court, per curiam, denied Petitioner's application for a Writ of Mandamus; at 89 M.D. Miscellaneous Docket 1996.

No rehearing was sought or granted.

The Petitioner respectfully certifies that pursuant to Supreme Court Rule No. 13, this petition is timely filed within 90 days of the judgment sought to be reviewed.

STATUTES INVOLVED

This case stems directly from the fundamental impermissible refusal of the Respondent Pennsylvania court officers to grant the Petitioner access to the Court of

of Common Pleas of Luzerne County, Pennsylvania, by refusing to grant the Petitioner necessary Rules Returnable and necessary dates certain for Argument and for Hearing of the Petitioner's motions for relief pursuant to the Pennsylvania Rules of Civil Procedure.

The Due Process Clause to the Fourteenth Amendment to the Constitution of the United States states:

> .... nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Pennsylvania Rule of Civil Procedure No. 205.2 (relating to the filing of legal papers with the prothonotary), states:

> No pleading or other legal paper that complies with the Pennsylvania Rules of Civil Procedure shall be refused for filing by the prothonotary based on a requirement of a local rule of civil procedure or judicial administration.

Pennsylvania Rule of Civil Procedure No. 211, states:

> Any party or his attorney shall have the right to argue any motion and the court shall have the right to require oral argument. With the approval of the court oral argument may be dispensed by agreement of the attorneys and

> the matter submitted to the court either on the papers filed of record, or on such briefs as may be filed by the parties. The person seeking the order applied for shall argue first, and he may also argue in reply, but such reply shall be limited to answering arguments advanced by the respondent. In matters where there may be more than one respondent, the order of argument by the respondents shall be as directed by the court.

Pennsylvania Rule of Civil Procedure No. 1029, states:

> (a) A responsive pleading shall admit or deny each averment of fact in the proceeding pleading or any part thereof to which it is responsive. A party denying only a part of an averment shall specify so much of it as is admitted and shall deny the remainder. Admissions and denials in a responsive pleading shall refer specifically to the paragraph in which the averment admitted or denied is set forth.
>
> (b) Averments in a pleading to which a responsive pleading is required are admitted when not denied specifically or by necessary implication. A general denial or a demand for proof, except as provided by subdivision (c) of this rule, shall have the effect of an admission.
>
> (c) A statement by a party that after

> reasonable investigation the party is without knowledge or information sufficient to form a belief as to the truth of an averment shall have the effect of a denial.

STATEMENT OF THE CASE

On February 16, 1996, upon Petitioner's application to the Pennsylvania Superior Court for stay or injunction pending appeal, and for restoration of alimony and child support pendente lite pursuant to Pa.R.A.P. No. 1732(b), the Pennsylvania Superior Court entered per curiam an Order directing that:

> The application for stay is denied without prejudice to seek relief in the trial court. The trial court shall state its reasons for granting or denying the application as to its order which, inter alia, provided that the appellee satisfied his alimony and child support obligation.

The Order of the Pennsylvania Superior Court of February 16, 1996, is appendixed herein at p. 2a.

On February 22, 1996, Petitioner filed of record in the Court of Common Pleas of Luzerne County, her application for stay or injunction pending appeal, and for restoration of alimony and child support pendente lite.

Petitioner's application for stay conformed in all respects to the Pennsylvania Rules of Civil Procedure and exact copies were served on all parties. However, the Respondent court officers refused to grant the Petitioner a

necessary Rule Returnable and a date certain for Argument, as was their duty to do.

On March 19, 1996, Petitioner addressed her letter to Respondent Nancy M. Sobolevitch, Court Administrator of Pennsylvania, and advised her of the refusal of the Court Officers of the Court of Common Pleas of Luzerne County to enter dates certain upon Petitioner's moving papers regarding her Requests for a Rule Returnable and date certain for Argument or Hearing of the aforesaid application for stay. A copy of the Petitioner's letter to the Pennsylvania Court Administrator of March 19, 1996, is appendixed at p. 3a.

On various occasions the Respondent court officers of the Court of Common Pleas of Luzerne County, Pennsylvania have systematically failed or refused to enter dates certain upon the Petitioner's moving papers which requested dates for Rules Returnable and for Argument or Hearing of the aforesaid application for stay; as is Petitioner's right pursuant to the Pennsylvania Rules of Civil Procedure.

On April 2, 1996, Respondent Judge Myers entered an Order, without opinion, denying and dismissing Petitioner's aforesaid application for stay, without necessary Rule Returnable and without necessary Argument, as required by Rule No. 211, of the Pennsylvania Rules of Civil Procedure.

A copy of Judge Myer's Order is appendixed at p. 5a.

On April 11, 1996, the Petitioner filed a Petition for a Writ of Mandamus in the Commonwealth Court of

Pennsylvania, seeking to compel the Respondent court officers to allow the Petitioner access to the Court of Common Pleas of Luzerne County. The said Petition was transferred, *sua sponte*, to the Pennsylvania Supreme Court based upon that Court's original jurisdiction of matters involving the Pennsylvania judiciary.

On July 23, 1996, the Pennsylvania Supreme Court, per curiam, denied Petitioner's application for a Writ of Mandamus; at 89 M.D. Miscellaneous Docket 1996. A copy of the Order is appendixed at p. 1a.

FACTS

Heretofore, on December 4, 1989, on an underlying divorce action filed in the Court of Common Pleas of Luzerne County at Term and Number 2534-C of 1985, Respondent Judge Toole impermissibly failed to enter an order to compel the Defendant, Charles P. Medico, to produce necessary discovery as ordered by Respondent Judge Toole.

On December 4, 1989, Respondent Judge Toole recused himself from any case involving the Petitioner, and entered disposition indicating that he would request that the President Judge of the Court of Common Pleas of Luzerne County assign another judge to the case.

From December 4, 1989 to January 1, 1991, Respondent Judge Toole failed or refused to request the President Judge of the Court of Common Pleas of Luzerne County to assign another judge to the aforesaid divorce case after recusing himself.

From January 1, 1991, when Respondent Judge

Toole became President Judge of the Court of Common Pleas of Luzerne County, Respondent Judge Toole has continued to hold the said motion to compel discovery without disposition.

More recently, on November 8, 1995, Respondent Judge Myers has refused to hold Argument or Hearing upon the aforesaid motion to compel discovery of December 4, 1989.

The conduct complained of is impermissible and contrary to the due process and equal protection clause of the Fourteenth Amendment to the U.S. Constitution; and the Pennsylvania Rules of Civil Procedure, specifically, Rule No. 205.2 (relating to the filing of legal papers with the Prothonotary); Rule No. 209 (relating to duty of petitioner to proceed after answer is filed); Rule No. 211 (relating to the right of a party to argue any motion); and Rule No. 1029 (relating to admissions of averments in a pleading when not denied specifically or by necessary implication).

REASONS FOR GRANTING THE WRIT

The legitimacy of the Commonwealth's monopoly over techniques of final dispute settlement is implicated where in this case the Petitioner alleges that Pennsylvania state officials responsible for judicial administration in the Court of Common Pleas of Luzerne County, have unfairly and impermissibly denied Petitioner access to that court for the proper filing of her petitions for relief. By their failure to answer the Petitioner's allegations of their impermissible conduct in denying her access to the court, the Respondents have admitted the truth of the Petitioner's allegations pursuant to Pa.R.C.P. No. 1029(b).

In the underlying cases judicial proceedings have become the only effective means of resolving the disputes between the parties. Denial of access to the court for the proper filing of Petitioner's legal papers seeking relief first occasioned Petitioner's request for a Writ of Mandamus to the Pennsylvania Supreme Court, seeking that Court's assistance in invoking the right of access to the Court of Common Pleas of Luzerne County, and the right to argue her motions.

Recognition of the Commonwealth's judicial framework illuminates the precise issue presented before the Supreme Court of Pennsylvania, and in this request for certiorari. On more than one occasion, this Court, and other Courts, have recognized, due process requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and property through the judicial process must be given a meaningful opportunity to be heard.

Early in this Nation's jurisprudence, this Court voiced the doctrine that, "[W]herever one is assailed in his person or his property, there he may defend." *Windsor v. McVeigh*, 93 U.S. 274, 277, 23 L.Ed. 914 (1876). Although "[m]any controversies have raged about the cryptic and abstract words of the Due Process Clause," as Mr. Justice Jackson wrote for the Court in, *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950), "there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be precedent by notice and opportunity for Hearing appropriate to the nature of the case." *Id.*, at 313, 70 S.Ct. at 656.

Instantly, the Petitioner has not agreed with the attorneys for other parties to dispense with argument nor to submit the matter to the court. By the conduct

complained of, the Respondents Judge Toole, Court Administrator Wilbert E. Thomas and Senior Judge Jay W. Myers, have denied the Plaintiff due process and equal protection by refusing her the right to argue her motion in open court, where the conduct complained placed the Respondents and Defendants to the aforesaid motion for stay, in the position that they did not have to respond to a Rule Returnable or to argue in opposition to the said motion for stay.

STAGE OF PROCEEDINGS AT WHICH THE FEDERAL QUESTION SOUGHT TO BE REVIEWED WAS RAISED

The Petitioner has not raised the specific federal question regarding the due process and equal protection clause of the Fourteenth Amendment before the Pennsylvania Commonwealth Court nor before the Pennsylvania Supreme Court.

The Petitioner's original application for a Writ of Mandamus plainly raised the issue of due process and equal protection; particularly, her specific claims regarding Pennsylvania Rule of Civil Procedure No. 205.2 (relating to the filing of legal papers with the Prothonotary); Rule No. 209 relating to the duty of the Petitioner to proceed after answer is filed); Rule No. 211 (relating to the right of a party to argue any motion) and Rule No. 1029 (relating to admissions of averments in a pleading when not denied specifically or by necessary implication).

AMPLIFICATION OF THE REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

The Petitioner does not seek review of state court

decisions which have gone against her. Her federal claim is completely separate and distinct from the domestic relations issues pending in the state court below. This request for a writ of certiorari is a separate action for redress of violations of her right to due process and equal protection, fundamentally denied by Pennsylvania court officers who have repeatedly denied her the right to be heard in open court.

This Honorable Court is not asked to enmesh itself with domestic relations issues to fairly adjudicate the Petitioner's federal claims. Review of the claim sought does not involve domestic relations issues; hence the federal domestic relations exception does not apply. The Petitioner's original Petition for Mandamus relief, dismissed out of hand by the Pennsylvania Supreme Court, was plainly an attempt to obtain fundamental access to the Pennsylvania Court of Common Pleas to argue her petitions for relief; and if denied, to have a record from which to appeal her claims on the merits.

The Petitioner's request for a writ of certiorari has to do with fundamental, disparate, impermissible and unconscionable treatment at the hands of state court officials. It was plainly an abuse of discretion and fundamental error, for the Pennsylvania Supreme Court to refuse to grant the Petitioner's application for a writ of mandamus; especially, in light of the fact that none of the Respondents denied the Petitioner's verified allegations; thus, all of the Petitioner's allegations were deemed to be true.

A copy of the Petitioner's Application for a Writ of Mandamus is appendixed at p. 7a.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Honorable Court grant her a Writ of Certiorari on the question of whether the Pennsylvania Supreme Court abused its discretion and erred in denying the Petitioner's Application for a Writ of Mandamus herein.

Respectfully submitted,

Carolee A. Medico

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